(1) (3)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR.

Cr. APPEAL NO. 1013 /2001.

APPELLANT.
(IN JAIL CUSTODY).

Munna Alias Hamarayan, aged about 45 years, son of Achhelal Bidouliya Sharma, resident of village Khutkula Bada, Panchshil Nagar, Durg, Distt. Durg, Chhattisgarh.

VERSUS.

RESPONDENT.

State of Chhattisgarh Through P. S. Durg, Distt. Durg, Chhattisgarh.

CRIMINAL APPEAL U/S 374(2) Cr.P.C.

CONVICTION

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 1013/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:

HON'BLE MR. L.C.BHADOO
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1013/2001

Appellant : **Munna alias Harnarayan**

Versus

Respondent : **State of Chhattisgarh.**

Mr. V.P. Gupta learned counsel for the appellant.
Mr. G.D. Vaswani Additional Public Prosecutor with Shri Akhil Mishra P.L. for the State.

ORAL JUDGMENT
(21.12.2006)

Per L.C. Bhadoo, J

The appellant has preferred this Criminal Appeal under section 374(2) of the Code of Criminal Procedure against the judgment of conviction and order of sentence dated 4.9.2001 passed by Additional Sessions Judge, Durg, in Sessions Trial No. 83/2000 whereby he has been held guilty under Section 302 of the Indian Penal Code for

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मामला क्रमांक CGA.1013/01.. **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

committing the murder of his step son Devendra Kumar, and sentenced to undergo imprisonment for life and pay fine of Rs. 1000/- in default of payment of fine to further undergo RI for six months.

2. Case of the prosecution in brief is that Chandrakanta PW-2, mother of Devendra Kumar lodged Dehati Nalisi Ex. P-2 before the Station House Officer, Durg on the basis of which he recorded the First Information Report Ex. P-8 to the effect that she was residing with the accused in the house of Mehtar Sahu as tenant. As her earlier husband deserted her two years back there from, she started residing with accused Munna alias Harnarayan as his wife with her son Devendra Kumar aged about 4 years. There was another son to her namely Surendra from the accused. As Devendra Kumar was from her earlier husband, accused considering him the step son used to hate and beat him. Whenever, she used to ask Munna not to beat him, accused used to beat her also. On the fateful day i.e. 13.9.1999 at about 7.30 a.m. she went to the grocery shop to collect flour and her son Devendra Kumar was playing in front her house and her husband Munna alias Harnarayan was at the residence. However, she took her another son Surendra along with her. When after 5-10 minutes she returned to her house and as soon as she entered the house, she saw

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that her son Devendra Kumar was lying dead on the bed and blood was oozing out from his mouth and he had passed stool also. On inquiry from accused Munna alias Harnarayan, he informed that he slapped Devendra Kumar as a result of which he fell down and died. On this she called the people of vicinity. Station House Officer registered the crime under section 302 of the IPC against the accused, left for the scene of occurrence and after giving notice to the Panchas he conducted inquest on the body of Devendra Kumar and prepared report Ex. P-5. Thereafter, body was sent for post mortem examination to Government Hospital, Durg under Ex. P-1 where Dr. V.K. Sao PW-1 conducted the post mortem examination on the body of Devendra Kumar and prepared the post mortem report Ex. P-1. He noticed contusion injuries on the face, chest and back side of the body of Devendra Kumar and opined that cause of death was shock and hemorrhage as a result of ante mortem injuries and rupture of spleen.

3. After usual investigation the charge sheet was filed in the Court of Judicial Magistrate First Class, Durg who in turn committed the case to the Court of Sessions Judge, Durg from where learned Additional Sessions Judge, Durg, received the same on transfer for trial.

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आदेश पत्रक (पूर्वानुबद्ध)

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4. The prosecution in order to establish the charge against the accused examined six witnesses. Statement of the accused under section 313 of the Code of Criminal Procedure was also recorded in which he admitted that he was at his residence but he did not know as to where Devendra Kumar was, and rest of the material appearing against him in the prosecution evidence has been denied by him. He however has stated that he loved Devendra Kumar and he did not commit his murder. He has further stated that as usual he was busy in his daily work on the date of incident also and Devendra Kumar was sleeping, how Devendra Kumar sustained injuries and how he died, he did not know and thus he pleaded his innocence and false implication in the case.

5. We have heard Shri V.P. Gupta appearing on behalf of the accused/appellant and Shri G.D. Vaswani Additional Public Prosecutor and Shri Akhil Mishra, Panel Lawyer for the respondent/State.

6. Learned counsel for the accused/appellant has not disputed the homicidal nature of death of Devendra Kumar. That apart, from the evidence of PW-2 Chandrakant – mother of the deceased Devendra Kumar before whom the accused made extra judicial confession that he

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committed the murder of Devendra Kumar, and medical evidence of Dr. V.K.Sao PW-1 in which he has stated that the injuries were ante mortem in nature, spleen was ruptured and cause of death of shock and hemorrhage, it is established that the death of Devendra Kumar was homicidal in nature.

7. As far as involvement of the accused in the crime in question is concerned, Chandrakanta PW-2, wife of the accused and mother of the deceased has categorically stated that on the fateful day she went to the grocery shop along with her another son Surendra Kumar, at that time accused and her son Devendra Kumar were at the residence, when she returned home, she inquired from her husband about Devendra Kumar, he replied that he had committed his murder and he was lying dead. She further inquired from him that how much beating had he given to Devendra Kumar, he replied that he had murdered him, on which she raised screams and asked the neigbours to inform her parents and thereafter she lodged the report. In the cross examination of this witness, the defence has not been able to elicit any circumstance which discredits the evidence of this witness. There was no reason for this witness to implicate her husband in a false case. Moreover, it is established that at the time of

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आदेश पत्रक (पूर्वानुबद्ध)

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incident accused and deceased Devendra Kumar were at the residence which is admitted by him in his statement recorded under section 313 of the Code of Criminal Procedure and Devendra Kumar sustained so many injuries due to which his spleen was ruptured. The accused has not explained as to how Devendra Kumar received injuries in the house. As per the provisions of section 106 of the Indian Evidence Act when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Therefore, as the accused was at his residence where minor child Devendra Kumar sustained injuries, accused was the best person to explain as to how Devendra Kumar sustained injuries but he remained silent and therefore he has failed to discharge his burden as per the provisions of section 106 of the Indian Evidence Act.

8. For the foregoing reasons, we do not find any illegality or infirmity in the impugned judgment of the trial Court and therefore, the appeal being devoid of substance is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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